HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 17816 of 2006

Date 7-9-2007

Between:
SriV.V.N.S.N.Murty,
S/o.V.Srirama Murthy,
O/o. The Deputy Inspector General of Police,
Visakhapatnam Range, Visakhapatnam.

…….PETITIONER

AND

The Director General of Police,
Andhra Pradesh, Lakdi ka pul,
Hyderabad and others.

……..RESPONDENTS

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.17816 of 2006

ORDER: (per Smt. T.Meena Kumari,J)

The petitioner filed the present writ petition seeking a writ of Mandamus to declare the orders passed in O.A. No. 103 of 2002, dated 18.1.2005 on the file of the A.P. Administrative Tribunal, Hyderabad as illegal and arbitrary and consequently direct the respondents to restore the family planning incentive increments to the petitioner which was granted to him while working in the Judicial Department.

The brief facts of the case are that the petitioner was appointed as L.D. Steno in Judicial Department in the year 1983. During the year 1987, he underwent vasectomy operation. Accordingly, as per G.O. Ms. No. 52, dated 23.1.1984 the incentive increment was allowed to such of the Government servants who had undergone vasectomy operation and accordingly as per the said G.O. in the year 1988, he was sanctioned increment of Rs. 30/-. While so, pursuant to the examination conducted by the A.P.P.S.C., he was selected to the post of Senior Stenographer.

Consequent upon his selection as Senior Stenographer, he resigned from the department of judiciary and joined in the office of the Deputy Inspector General of Police, Visakhapatnam. He, thereafter, made a representation to the respondents on 28.6.1990 seeking condonation of interruption in service for two days i.e., from 16.9.1988 and 17.9.1988. Thereafter, the 2nd respondent through orders vide C. No. 2124/Aud./90, dated 15.9.1990, condoned the break period of two days in service and held that the service rendered by the petitioner in the Judicial Department would be counted for all purposes viz., Pay Fixation, Carry forward of leave, pension etc., except for seniority in the police department. However, when the respondents denied family planning incentive to the petitioner through proceedings dated 22.11.2001, the petitioner filed O.A. No. 103 of 2002 before the Tribunal. The Tribunal by the order impugned in this writ petition, disposed of the O.A. observing that if the said provision is still existing, it is open to the applicant to make a representation to the appropriate authority and it directed the respondents to pass appropriate orders, if G.O. Ms. No. 52 is still in vogue. Aggrieved by the same, the petitioner filed the present writ petition.

Learned counsel for the petitioner would contend that as per the orders dated 15.9.1990, the petitioner is entitled for all the benefits except seniority since the said increment was also included in his pay

prior to joining of service in the police department. He submits that the Tribunal without taking into consideration rule position has upheld the orders of the first respondent dated 22.11.2001. He, therefore, prayed that the writ petition be allowed and the impugned order be set aside.

On the other hand, learned Government Pleader for Services-I appearing for the respondents, supported the impugned order and stated that the writ petition be dismissed.

The petitioner consequent upon his selection as Senior Stenographer by the A.P.P.S.C., resigned from the judicial department and joined the police department as Sr. Stenographer. Admittedly, the petitioner has not taken prior permission before applying to the post of Senior Stenographer. As per Rule 26 of the A.P. Revised Pension Rules, 1980, when a person resigns from a department, he is not entitled for past service and other allied service benefits.

Rule 26 of the A.P. Revised Pension Rules reads thus:

> Forfeiture of service on resignation:
>
> (1) Resignation from a service or post entails forfeiture of past service.
>
> Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.
>
> Interruption in service in a case falling under the proviso to sub rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government Servant on the date of relief or by formal condonation

to the extent to which the period is not covered by leave due to him.

Thus, it is clear from the aforementioned rule that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. In the instant case, since the petitioner did not obtain prior permission before applying to the post of Senior Stenographer, he is not entitled for past service. Therefore, the said rule has no application to the present case. In the circumstances, we do not find any reason to interfere with the order of the Tribunal. So far as granting of family planning incentive is concerned, as directed by the Tribunal, the petitioner is at liberty to make appropriate application to the authorities within a period of four weeks from the date of receipt of a copy of the order. As and when such representation is filed by the petitioner, the respondents shall dispose of the said application in accordance with the rules.

The writ petition is accordingly disposed of. No costs.

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(T. MEENA KUMARI,J)

Date: 7th September, 2007

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(G. CHANDRAIAH,J)

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